REMARKS

I. Status of the Application

Claims **180-213** are pending in this application, of which claims **180, 191,** and **203** are independent.

Claims **1-179** were previously cancelled.

Reconsideration and further examination of the application is respectfully requested.

II. Rejections Under 35 U.S.C. § 103(a)

Claims 180-213 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over cited portions of U.S. Patent No. 6,058,377 ("Traub") in view of cited portions of U.S. Patent No. 5,970,479 ("Shepherd").

1. The cited portions of Traub and Shepherd do not disclose or suggest "determin[ing] . . . a price of the financial instrument based at least in part on the imbalance [between a quantity of received buy orders and a quantity of received sell orders for the financial instrument]."

Independent claims **180, 191,** and **203** recite:

> determin[ing] . . . an imbalance between a quantity of received buy orders and a quantity of received sell orders for the financial instrument; [and]
>
> determin[ing] . . . a price of the financial instrument based at least in part on the imbalance.

The Examiner concedes that Traub does not disclose or suggest these recitations. The Examiner does not even assert that Shepherd discloses or suggests these recitations.

Applicants note that one cited portion of Shepherd discloses the following concerning "pricing:"

> . . . said pricing and matching comprising the steps, for each offered contract, of:
>
> (i) selecting the registering data corresponding to the time of maturity for a predetermined phenomenon;
>
> (ii) calculating a counter-consideration derived from the said entitlement;

> (iii) comparing the said consideration and the said counter-consideration; and
>
> (iv) matching a contract on the basis of the said comparison.

Shepherd, col. 5, lines 2-11. However, the actions described here for "pricing and matching" do not mention any imbalance between a quantity of received buy orders and a quantity of received sell orders. Notably, Shepherd does not include the word "imbalance." The Office Action does not identify any other prior art or other evidence that discloses, suggests, or otherwise would render obvious these recitations.

2. The cited portions of Traub and Shepherd do not disclose or suggest "determine[ing] . . . an initial price of a financial instrument based at least in part on an estimated revenue for a movie, in which the financial instrument represents the movie."

Independent claims **180, 191,** and **203** also recite:

> determining, using a computing device, an initial price of a financial instrument based at least in part on an estimated revenue for a movie, in which the financial instrument represents the movie.

The Examiner concedes that the cited art does not disclose "revenue for a movie" or "a financial instrument that represents a movie," but argues that "revenue for a movie and a financial instrument that represents a movie [is] representative of a revenue bond . . . to finance different projects for example bridges [and] road projects" wherein motorists pay bridge and road tolls that pay off the revenue bond. Office Action, p. 3. The Examiner concludes that "financing a movie is no different than financing bridges because the fees . . . paid by the patrons that attend the movie would be used in paying off the revenue bond that was used to finance the movie." *Id.*

The Office Action does not cite any reference – prior art or otherwise – as disclosing or suggesting "revenue for a movie," "a movie," "a financial instrument that represents a movie," "an initial price" for such a financial instrument, or the act of "determining an initial price" of such a financial instrument. The Office Action effectively concedes on page 3 that all of these features are missing from the cited art.

The Office Action's rejection relies on the statement that "financing a movie is no different than financing bridges." The Office Action provides absolutely no evidence or support

of any kind for this assertion, and it therefore is not a proper basis for a rejection.[1] Is there an actual movie that was financed the same way as an actual bridge? If so, which movie? When? Did it occur before the priority date of the present application? The Office Action's bridge and road analogies are not prior art; the Office Action has not even asserted that they are prior art.

Furthermore, the statement that "financing a movie is no different than financing bridges" is also vague and false. The statement is vague because there are many different ways to finance a movie and many different ways to finance a bridge. Which method is similar to which? Also, there are myriad differences between a typical movie financing and bridge financing, such as completely different risk factors, revenue streams (e.g., a relatively continuous stream of bridge toll revenue versus a relatively brief period of box office receipts), investment liquidity, and regulatory concerns, among other differences. Thus, the Office Action's assertion is false. As the Office Action's statement lacks support – and is vague, untrue, and not prior art – it does not establish any basis for rejecting the claims.

When a claim recites a limitation that is absent from the art, the claim is not obvious under 35 U.S.C. § 103(c). *See*, e.g., MPEP §2143.03; *Motorola v. Interdigital Technology Corp.,* 121 F.3d 1461, 1466-67, 43 USPQ2d 1490, 1490-91 (Fed. Cir. 1997) (reversing a jury

[1] *See* MPEP 2144.03. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) ("[T]he Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. *See also In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

verdict of obviousness because an element was not taught in the particular art relied upon, even though that element was known elsewhere).

For at least these reasons, the Examiner has not established a *prima facie* case of obviousness, and the instant rejection of claims **180, 191,** and **203** (and the claims depending therefrom) should be withdrawn.

General Comments on Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

Authorization for Email Communication

Recognizing that Internet communications are not secure, Applicant hereby authorizes the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. Applicant understands that a copy of these communications will be made of record in the application.

General Authorization for All Fees During Pendency of this Application

For the entire pendency of the application, the Commissioner of Patents is hereby authorized to charge all fees, or credit any overpayment, to our Deposit Account No. 50-3938.

CONCLUSION

In general, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing remarks, Applicants respectfully submit that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in this paper or documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account No. 50-3938. Applicants' undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at (212) 294-8055.

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Respectfully submitted,

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